

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18705.2. Materiality Standard: Economic Interests in Real Property.

(a) Directly involved real property.

(1) Real property, other than leaseholds. The financial effect of a governmental decision on the real property is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property.

(2) Real property, leaseholds. The financial effect of a governmental decision on the real property in which an official holds a leasehold interest is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any effect on any of the following:

(A) The termination date of the lease;

(B) The amount of rent paid by the lessee for the leased real property, either positively or negatively;

(C) The value of the lessee's right to sublease the real property, either positively or negatively;

(D) The legally allowable use or the current use of the real property by the lessee; or

(E) The use or enjoyment of the leased real property by the lessee.

(b) Indirectly involved real property interests.

(1) Real property, other than leaseholds. The financial effect of a governmental decision on real property which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances

regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the decision will have a material financial effect on the real property in which the public official has an interest. Examples of specific circumstances that will be considered include, but are not limited to, circumstances where the decision affects:

(A) The development potential or income producing potential of the real property in which the official has an economic interest;

(B) The use of the real property in which the official has an economic interest;

(C) The character of the neighborhood including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.

(2) Real property, leaseholds. The financial effect of a governmental decision on real property in which a public official has a leasehold interest and which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the governmental decision will:

(A) Change the legally allowable use of the leased real property, and the lessee has a right to sublease the real property;

(B) Change the lessee's actual use of the real property;

(C) Substantially enhance or significantly decrease the lessee's use or enjoyment of the leased real property;

(D) Increase or decrease the amount of rent for the leased real property by 5+percent during any 12-month period following the decision; or

(E) Result in a change in the termination date of the lease.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

HISTORY

1. New section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).

2. Change without regulatory effect amending section heading filed 3-26-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).

3. Editorial correction of 1 (Register 2000, No. 25).

4. Amendment filed 1-16-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3).